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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1958

No. 613.

THE ST. REGIS TRIBE OF MOHAWK INDIANS, *Petitioner*,

v.

THE STATE OF NEW YORK, *Respondent*.

## PETITIONER'S REPLY BRIEF

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January, 1959.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Because of the unusual circumstances* confronting counsel this Reply Brief is confined to a few hurried page by page observations on statements or implications in respondent's Brief in Opposition which should

* This brief is being written on January 29. Despite the requirement of Rule 24, petitioner's counsel of record has *never* been served with a copy of respondent's brief, and not until late in the afternoon of January 28 did he learn indirectly that respondent had nevertheless filed it on or about January 23. And not until he personally went to the Clerk's Office this morning (January 29) was he able for the first time to obtain and read a copy, and to learn that it had already in due course been distributed to the Court.

not be let stand without comment. All italicized page references are to the latter brief.

*Page 1.* It will be noted that respondent's apparently comprehensive summary of its opposition, viz., that the Court of Appeals' decision "rests on more than one non-federal ground to support it," is scarcely consistent with its statement at the bottom of *page 2* that "the gist" of that decision is the concluding paragraph of the opinion which most certainly presents a federal question as to the applicability of Sec. 177. Or with the stress placed on that same paragraph in the last two lines on *page 1* and the first two lines on *page 2*.

*Page 1.* The reference to the power of the State to take the Indians' lands not being at issue is a mere play on words which can be of no help to this Court as long as the manner of exercising that power remains so very much at issue.

*Page 1.* The reference to the Indians having "failed to prove" their title is ridiculous. As pointed out at page 3 of our Petition this case has been submitted to all four courts solely on the State's motion to dismiss. The Indians have never had their "day in court", when they are prepared to offer whatever proof may be necessary both as to their title, and as to disproving the irresponsible insinuations about "a third time" twice repeated on *page 2*.*

*Pages 2 and 4.* The attempt to stretch unduly the authority of *Bean* v. *Tonnele* on both pages and of *Conkling* v. *Weatherwax* on page 4 adds nothing to

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* Petitioner is the separate American portion of the St. Regis tribe, and is prepared to prove that the entire 1856 payment went to the Canadian Indians and their attorney.

the law of the case. For the Court of Appeals had already fully considered both cases and the limited presumption which they support as "obligat[ing] the claimants to come forward with more than the bare assertion that the money was not so paid" (Petition, page 15a) is an obligation which petitioner stands ready to meet—again as soon as it has its day in court. A respondent which itself made the election that is responsible for the case having first to wend its way through four courts on a motion cannot be heard to complain about what claimant has or has not proved.

*Page 3.* Frankly we resent the charge of disingenuousness. Indeed it is difficult to avoid the feeling that if the term is to be used at all it might far better be applied to respondent's obvious effort to distract attention from the consistent efforts of the State's highest court and its highest law officer to nullify an Act of Congress by their mere *ipse dixits*.

*Page 3.* Our "elaborate discussion" of the Report under the Treaty of Ghent (Pet. 16-17) was expressly directed to correcting the wholly erroneous implication of the concluding "gist" paragraph of the Court of Appeals' opinion that a dispute with respect to Barnhart's Island arose under the Treaty of 1796 and was settled by the 1856 transaction. Respondent's insistence on referring to the text at R. 58 is a boomerang. That text confirms our "discussion" and shows that as we said that dispute was much larger, involving approximately fifty other islands as well; that it arose under the treaty of 1783; and that it was settled under the procedure set up by the treaty of 1814.

*Pages 4 and 5.* All the talk about rescission is wholly irrelevant. Petitioner had nothing to rescind.

*Supplemental.* Pages 7-11 of the petition were devoted primarily to establishing the importance of and confusion attendant upon the federal question presented by this case. Since that petition was filed there has come to our attention still another contemporaneous New York State legislative report, that of the Special Legislative Committee on the Revision and Simplification of the Constitution, printed as Legislative Document No. 57 (May 1958). This report contains at pages 33-42 an analysis of the law relating to Indian lands, which is summarized on page 38 as follows:

> "The upshot of the matter is that for the first time in over 150 years a confident and comprehensive statement may now be made concerning state and federal power over Indians on reserved land in New York. Today New York has authority to apply its laws to occurrences on the Indian reservations. *But it cannot decide whether or not the tribal lands may be or must be conveyed to non-Indians. This remains within the sphere of federal power. . . .*" (Italicizing supplied.)

Respectfully,

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